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# BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION

In the Matter of:

APPEAL OF GROUNDWATER POLLUTION CONTROL PERMIT NO. NEV2020104

ORDER ON APPEAL

#### PROCEDURAL HISTORY

On March 7, 2022, Great Basin Resource Watch ("GBRW") filed its appeal of the Nevada Division of Environmental Protection's (the "Division") issuance of Water Pollution Control Permit No. NEV2020104 (the "Permit") to Lithium Nevada Corporation ("LNC") for the proposed Thacker Pass lithium mining project. GBRW's appeal form claimed that the Division's final decision was: (1) arbitrary or capricious or characterized by abuse of discretion; (2) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; (3) affected by other error of law; and (4) made upon unlawful procedure.

On March 15, 2022, LNC filed a Petition for Leave to Intervene in the appeal. The Petition was unopposed and the Commission granted LNC's request for intervention on April 15, 2022.

The Commission established a briefing schedule on GBRW's appeal. The Division, GBRW, and LNC (collectively, the "Parties") agreed to waive the twenty-day hearing requirement contained within NRS 445B.350.

On April 23, 2022, GBRW filed its opening brief. The Division and LNC each filed response briefs on May 20, 2022. GBRW filed its reply brief on June 10, 2022.

On June 9, 2022, LNC filed a Motion to Strike the Report of Steven Emerman (the "Emerman Report"). GBRW submitted the Emerman Report to the Division for the first time in its opening brief. LNC's Motion to Strike argued that the Emerman Report must be struck under NAC 445B.8914(5), which provides that the Commission may not consider evidence that was not submitted to the Division before the issuance of the final

decision being appealed unless (1) the Division allowed a period of public comment before the Division took the action and (2) the Commission determines that reasonable cause exists for the failure of a party to submit the evidence. In its June 10, 2022 reply brief, GBRW argued that reasonable cause existed for its failure to submit the evidence. On June 13, 2022, the Chairman of the Commission granted LNC's Motion to Strike in part and denied in part. Pursuant to that decision, the Emerman Report was stricken from the record, however references to the report were permitted in opening statements prepared and presented by GBRW.

#### SUMMARY OF COMMISSION APPEAL HEARING

On June 28, 2022, a five-member panel of the Commission convened to hear arguments concerning the grounds of the appeal. The Commission Panel consisted of Chairman Tom Porta, Vice Chair Jason King, and Commissioners Jocelyn Torres, Mark Turner, and Mike Visher. The SEC panel was represented by Deputy Attorney General Asheesh S. Bhalla.

GBRW was present and represented by Julie Cavanaugh-Bill of the Cavanaugh-Bill Law Offices. The Division was present and represented by counsel, Senior Deputy Attorney General Daniel Nubel of the State of Nevada, Office of the Attorney General. LNC was present and represented by Laura Granier and Ashley Peck of Holland and Hart LLP.

The hearing proceeded in due course. The Parties were each permitted up to thirty minutes for an opening statement, twenty minutes for a reply to opening statements, and twenty minutes rebuttal. Additionally, the Commission was given time to question the Parties on any relevant matters. Public comment was allowed on three separate occasions.

Following arguments, the Commission deliberated on the issues surrounding the appeal. After deliberation on the merits of the legal arguments on appeal, the Commission unanimously voted to affirm the Division's decision to issue the Permit due to GBRW's failure to demonstrate any of the grounds for an appeal under NAC 445B.890.

DIVISION'S FINDINGS OF FACT ON APPEAL

On April 3, 2020, LNC submitted its application for the Permit for the proposed Thacker Pass lithium mining project to the Division. The permit application was determined administratively complete on July 17, 2020 when the Division proceeded with a technical review.

On March 8, 2021, the Division held a presentation regarding the permitting process with the Humboldt County Commission. On April 22, 2021, the Division held a virtual presentation on permitting process with the local citizens of the community. On May 25, 2021, the Division held its first presentation to the community regarding questions and concerns about the permit at the Orovada Community Center, approximately twenty miles away from the proposed mine. On June 24, 2021, the Division held a second presentation to the community regarding questions and concerns about the permit virtually.

On October 28, 2021, the Division posted public notice of its proposed issuance of the Permit. The public notice included a public comment period through December 1, 2021. The Division held a virtual public hearing on proposed issuance of the permit on December 1, 2021, attended by members of the public including GBRW. The Division received significant public comment during this period, including comments from GBRW. Upon request from GBRW and other members of the public, the Division extended the public comment period for an additional week, concluding on December 8, 2021.

On February 25, 2022, the Division published its final decision to issue the Permit to Lithium Nevada for the proposed Thacker Pass lithium mining project. Additionally, the Division provided extensive responses to public comment, including a letter from GBRW that was submitted to the Division on January 27, 2022, long after the expiration of the public comment period. On March 7, 2022, GBRW filed the underlying appeal with the Commission.

Based upon the arguments of the parties, the evidence, and documents on file in this matter, the Division found the following findings of fact. All findings made are based upon a preponderance of the evidence.

- 1. In compliance with NAC 445A.433(1), the Permit is a "zero discharge" permit.
- 2. The technical reports and information submitted by LNC as part of the application process and submitted to the Commission as part of the administrative record offer reasonable support for the Division's factual determination that the design of the Clay Tailings Filter Stack, the Seepage Collection System, and the Reclaim Pond will protect the waters of the State from degradation. See NAC 445A.424(1)(b).
- 3. The terms of the Permit offer reasonable parameters and monitoring requirements for the Division ensure that LNC's construction, maintenance, and closure of the Clay Tailings Filter Stack, the Seepage Collection System, and the Reclaim Pond protects the waters of the State from degradation in compliance with NAC 445A.431.
- 4. The Division complied with all procedures required to issue the Permit. See NAC 445A.401-409.

#### CONCLUSIONS OF LAW

- 1. NAC 445B.890 establishes the grounds for appealing a final decision of the Division. In this case, the Commission determined based upon a preponderance of the evidence that GBRW did not establish any grounds for appeal.
- 2. The Division's issuance of the Permit was not in violation of any constitutional or statutory provisions;
- 3. The Division's issuance of the Permit was not in excess of the statutory authority of the Division;
- 4. The Division's issuance of the Permit was not made upon unlawful procedure;

1	5. The Division's issuance of the Permit was not affected by other error of law;
$_2$	6. The Division's issuance of the Permit was not clearly erroneous in view of
3	reliable, probative and substantial evidence on the whole record; and
4	7. The Division's issuance of the Permit was not arbitrary or capricious or
5	characterized by abuse of discretion.
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7	<u>ORDER</u>
8	THEREFORE, based on the foregoing:
9	The Division's decision to issue Water Pollution Control Permit No. NEV2020104 is
10	hereby affirmed.
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13	DATED this day of, 2022.
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15	STATE ENVIRONMENTAL COMMISSION  Docusigned by:
16	tom Porta
17	TOMºPORTA, CHAIR
18	
19	CERTIFICATE OF MAILING
20	I hereby certify that on the 8th day of July 2022, I deposited for mailing at
21	Carson City, Nevada, a true copy of the attached document, sent via Certified U.S. Mail
22	to:
23	DANIEL P. NUBEL
24	Deputy Attorney General 100 North Carson Street
25	Carson City, Nevada 89701-4717 Tel: (775) 684-1225
26	Fax: (775) 684-1108
27	Email: DNubel@ag.nv.gov Attorneys for Nevada Division of Environmental Protection
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